IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 610 OF 2004

IN

SUMMARY SUIT NO. 1013 OF 2004

Lalit B. Sharma .....Plffs.
vs.
Ashwin D. Monga .....Defnds.

D.A. Athavale for the plffs.

Clistofer D'souza i/b. Dalla and Associates for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 13th September, 2005.

P.C. :.

1. The present suit is filed for the recovery of sum of Rs.12.00 lacs under the agreement dated 18.12.99. The said agreement inter-alia reads as under :

> "17. And whereas the vendor subsequently decided to change his plans to leave Bombay and requested the purchaser to cancel the abovementioned agreement and agreed to refund

the amount paid by the purchaser to the vendor within two years from the date of execution of these present i.e. by 21st December, 2001 in the following manner, time being the essence of the Agreement :-

In the following manner in any event:-

(a) Rs.5,00,000/- (Rs. Five Lakhs only) on or before 5th January, 2001.

(b) Balance remaining amount of Rs.7,00,000/- (Rs.seven Lakhs only) and Interest accrued at the rate of 12% per year on or before 21st December, 2001.

2. Learned counsel for the defendant states that the amount is not due and payable because he has signed the said agreement in blank. He further contends that he has received the amount of Rs.12.00 lacs. It is also contended that there was no agreement for sale of any such premises with the goodwill as mentioned in the said agreement and therefore there is no amount due and payable. It is not possible to accept the said contention of the learned counsel for the defendant in the light of the written agreement between the parties dated 18.12.99.

3. However, with a view to grant an opportunity to defend the suit, I direct the defendant to deposit a sum of Rs.10.00 lacs within a period of four weeks failing which the plaintiff will be entitled to decree. The amount so deposited to be invested by the Prothonotary and Senior Master in fixed deposit of any nationalised bank for a period of three years and the same to be renewed from time to time till further orders.

4. If the amount is paid as aforestated, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

sd/-

****